

Voyeur Nation: Media, Privacy, and Peering in Modern Culture

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Reviewed by Rebecca S. Murray
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Introduction

Voyeur Nation: Media, Privacy, and Peering in Modern Culture by Clay Calvert is a critical examination at how voyeuristic tendencies play out in today's popular culture. Clay Calvert is the co-director of the Pennsylvania Center for the First Amendment and an assistant professor of communications and law at the Pennsylvania State University. He has published more than twenty law journal articles on the subject of the First Amendment and how it affects journalism, the media, and advertising. Calvert analyzes this phenomenon from historical, sociological, cultural, technological, and legal perspectives. Calvert focuses on the balance of protection between individuals' rights to privacy and the media's First Amendment protection through a careful study of featured cases. Calvert closely unveils the underpinnings of "reality" based television, which has grown in popularity recently recent times. The focus of the book is programs such as MTV's "The Real World", talk shows like "Jerry Springer", and news entertainment programs such as "Dateline" and "20/20."

A Study of Mediated Voyeurism

Calvert's book is divided into nine related sections. It begins with an introduction outlining Calvert's purpose for undertaking this study of voyeurism and the media. He opens the

introduction by noting how the film *The Truman Show*, where the main character's life plays out on a scripted television show completely unbeknownst to him, is not so far from the types of reality programming that are popular today. While the reality programming on television and voyeuristic websites are not as extreme as the fictional *The Truman Show*, the introduction provides an overview of the different media to be discussed and the legal theories involved. While this book aims to be an impartial study, the author at some points take a cynical view of the need for protection of mediated voyeurism at the expense of others' privacy.

Mediated voyeurism, defined as “the consumption of revealing images of and information about others' apparently real and unguarded lives, often yet not always for purposes of entertainment but frequently at the expense of privacy and discourse, through the means of the mass media and Internet,”(Id. at 2) is under fire in this book. The four main types of mediated voyeurism discussed are: video vérité voyeurism, reconstruction voyeurism, tell-all/show-all voyeurism, and sexual voyeurism.(Id. at 4). The main focus of the book is video vérité voyeurism cases which often play out through reality shows or televised courtroom dramas. Video vérité voyeurism also takes the form of political scandal reported in the media, like the Monica Lewinsky/President Clinton scandal. Calvert demonstrates how the media uses the First Amendment to protect the voyeuristic value of free expression by allowing the recording of information with hidden video equipment.

The first chapter, “Peeping Tom Meets Jennifer Ringley,” discusses the history of media voyeurism from legendary Lady Godiva and Peeping Tom, to the use of voyeurism in French

novels of the seventeenth through nineteenth centuries. The culmination of mediated voyeurism is exemplified by the television show “The Real World” and web cam sites on the Internet.

The second chapter, “The Social Forces Driving Mediated Voyeurism,” details the social forces that helped to build mediated voyeurism’s growing popularity in today’s society. Calvert discusses the need to see justice done, to the search for truth and the shifts in expectations of privacy as several of the reasons for the increased popularity of mediated voyeurism in our culture.

“Priming the Economic and Political Pumps of Mediated Voyeurism” analyzes how society’s views of politics and crime have shaped the rise in popularity of voyeuristic reality based crime shows, such as *Cops*, and political scandal driven news entertainment shows like *Dateline*. The chapter also describes how the low cost for reality shows makes them more attractive to networks because it is not necessarily to pay the high salary for stars like in sitcoms and drama series.

Calvert details the ways advances in technology have increased the ease and availability of surveillance opportunities. Smaller and more inexpensive recording devices allow individuals to capture video, audio, and still pictures completely undetected and unbeknownst to their subject. Because of this readily available technology there are a growing number of situations, such as those caught by cameras placed in bathrooms, changing rooms, or bedrooms that capture people during private moments and raise invasion of privacy issues.

After laying the historical and technological foundation, “Free Press, Free Voyeurs?” begins the First Amendment analysis of the news media’s right to invade the individual’s privacy for the purpose of informing the public of newsworthy stories. Calvert utilizes case law to show how, in many contemporary decisions, the individual’s right to privacy is sacrificed so society-at-large may benefit. The author uses the extreme example of *Shulman v. Group W. Productions* 955 P.2d 469 (Cal. 1998). to illustrate this point. In this case a rescue helicopter nurse was given a microphone to wear during the course of her work. While on the job, the nurse attended to a woman paralyzed by a terrible car accident. The accident victim was recorded during her painful ordeal in the helicopter as saying “I just want to die.” (Id. at 144). The recording of the events in the helicopter were then broadcast on a reality television program called *On Scene: Emergency Response*. The woman in the accident, Ruth Shulman, had no knowledge she had been recorded and was not made aware of it until she saw the program from her hospital bed. Shulman sued the television production company for public disclosure of private facts. The court gave deference to the media in determining what constituted newsworthiness, and held that because the news story was one of great importance to the general public, the detriment to one individual’s right-to-privacy was outweighed by the benefit given to the greater good through informing the population on the subjects of car accidents and the quality of emergency care.

In “Check Your Camera at the Castle Door” Calvert discusses the 1604 *Semayne’s Case* as the foundational privacy decision which held, “the house of every one is to him as his castle and fortress, as well as for his defense against injury and violence, as for his repose.” (*Semayne’s Case*, 77 Eng. Rep. 194, 195 (K.B. 1604)). Next, Calvert compares this with the decision issued

by the Supreme Court in 1999 in the companion cases of *Wilson v. Layne*, 119 S.Ct. 1692 (1999). and *Hanlon v. Berger* 129 F.3d 505 (9th Cir. 1997).

Reality television routinely features members of the press accompanying law enforcement officers into the private homes of citizens during the execution of warrants. The members of the press recorded the proceedings and broadcast them on reality television shows without the knowledge or consent of the individuals being searched. The first issue the Supreme Court focused on was whether individuals' Fourth Amendment rights were violated when media was allowed by law enforcement officials to enter a private residence to record warrant executions. The second question the court faced was whether a Fourth Amendment violation occurs each time law enforcement officials permit the media to enter private homes during warrant execution. On the first issue, Chief Justice William Rehnquist cited the precedent of *Semayne's Case* observing that the Fourth Amendment protects individuals from unreasonable searches and seizures. He noted that just because a search warrant has been obtained, "it does not necessarily follow that they were entitled to bring a newspaper reporter and a photographer with them." (See *Wilson v. Layne*, 119 S.Ct. 1692, 1697 (1999)).

In regards to the second issue, the Court determined the police enforcement officers to be not liable under the qualified immunity doctrine because it was not apparent they had violated a clear constitutional right.

This chapter also discusses paparazzi and how the law regulates them. Due to the concentrated celebrity population in California, the state enacted strict, and controversial, anti-paparazzi legislation holding individuals liable for constructive invasion of privacy with

telephoto lenses or other surveillance equipment even if there is no physical trespass on the property of another.

The final chapter, “Seeing Voyeurs in First Amendment Theory” discusses the future of free speech protection of mediated voyeurism. Marketplace accountability is where the public determines what is acceptable by showing their approval through tuning into the shows each week. It is what dominates the media system in the United States. Because of popularity in the marketplace of reality programming, legal accountability, where courts often side with television production companies over the rights of accident victims like in *Shulman*, will not be enough to protect individuals from privacy invasion. For the individual to be protected by privacy invasions from the media, the marketplace, the law, and policy created by the media industry must work together to balance individual rights and the protection of free speech.

Conclusion

Voyeur Nation tackles an important and difficult issue such as the balancing act between the media’s responsibility to serve the public interest and individuals’ rights to have their privacy protected. However, at times the book can be repetitive. Because several of the chapters overlap, the same cases, television shows, and theories are discussed. When these topics are reintroduced, they are treated as if they were appearing in the book for the first time. Despite this over-articulation of the facts and main theories, *Voyeur Nation: Media, Privacy, and Peering in Modern Culture* by Clay Calvert is recommended to those who are interested in further exploration of the growing phenomenon of voyeurism in today’s media. This book is

recommended for lawyers and legal scholars interested in communications law, the mass media, and popular culture.